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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,011	04/01/2004	Donna J. Adam	2563-85	1594
22442	7590	09/29/2005	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			LAYNO, BENJAMIN	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/817,011

Applicant(s)

ADAM ET AL.

Examiner

Benjamin H. Layno

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/28/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6-8, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Au-Yeung.

The patent to Au-Yeung discloses a method of playing a poker game comprising two wagering areas including an ante wagering area 1 and a bet wagering area 3. To play Au-Yeung's game a player makes an ante wager, three community cards (which is at least one community card) are dealt face up by the dealer, and two cards are dealt face down to each player and the dealer, see paragraph [0015] and [0016]. The player decides, after the first three community cards (which is at least after said first community card) are dealt face up, whether or not to continue to play, and if so, making a bet wager in the bet wagering area 3, paragraph [0017]. If the player decides not to continue play, the player folds and the dealer collects the ante wager, paragraph [0017]. The total number of cards used by the player is seven cards (which is at least five cards), two cards dealt to the player, and five cards dealt as the community cards, paragraphs [0019] and [0020]. The player's hand is compared to the dealer's hand to determine a winner, paragraph [0021]. To continue play, it must be ascertained

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whether or not the dealer's hand is a qualified hand, if not, the player is paid a first predetermined amount based on the ante wager, paragraph [0022].

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-4, 9, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Au-Yeung.

In regard to claim 2, 20 and 21, it well known in the art that if only one community card is dealt face up at the time the player decides whether or not to continue, this favors the house. However, if two or more community cards and dealt cards are dealt face up, the value of more of the cards dealt are revealed and the player can make a more informed decision. The advantage swings to the player's favor. Thus, determining exactly how many community cards and dealt cards are to be dealt face up (e.g. one card, two cards three cards, etc.) at the time the player decides whether or not to continue play would have been an obvious casino business decision depending how much profits the casino is willing to make.

Concerning claims 3 and 4, in Au-Yeung's poker game, the player must decide from the seven cards (two dealt cards, and five community cards), the best five cards to use. It is inherent that if the player selects four of the community cards to keep, then one of the community cards selected would have been the replacement card for one of

the dealt cards. The first community card may be the replacement card. It would have been obvious to remove the dealt card that was replaced in order to make Au-Yeung's game less confusing.

In regard to claim 9, determining exactly what to do with the bet wager if the dealer's hand does not qualify (e.g. house collects bet wager, bet wager pushes, player wins 1 to 1 the bet wager, etc.) would have been an obvious casino business decision depending how much profits the casino is willing to make.

5. Claims 5 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Au-Yeung as applied to claim 1 above, and further in view of Wirth.

The patent to Wirth teaches that it is known in poker games that have community cards, to provide a discard area for cards that are not used by the players, col. 3, lines 12-16. In view of such teaching, it would have been obvious to include a discard area to Au-Yeung's game in order to make the game more organized, less cluttered, and to prevent fraudulent activity.

6. Claims 10-15 and 22-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Au-Yeung as applied to claim 1 above, and further in view of Moody.

The patent to Moody teaches that it is known in poker games that have community cards, to award a progressive jackpot payout to players whenever certain predetermined card combinations (e.g. all Face Cards, all Face Cards of the same color, etc.) occur in the group of community cards, col. 11, lines 25-33. In view of such

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teaching, it would have been obvious to incorporate a community card wagering area to Au-Yueng's game for making a community card wager. Determining exactly what the value of the community cards are (e.g. all Face Cards, only the first community card is a Face Card, pair, only if the second community card is an Ace, etc.) in order to determine whether to pay a player a first predetermined amount, would have simply been a casino business decision which is always obvious in the art.

7. Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Au-Yeung as applied to claim 1 above, and further in view of Malcolm.

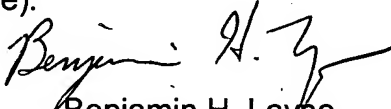
The patent to Malcolm teaches that it is known in poker games that have community cards to provide a 10's or better wagering area 42 for making a 10's or better wager, see Fig. 2. When a player makes a 10's or better wager, and the player's hand includes a 10's or better, the player is paid a predetermined amount, col. 6, lines 1-14. In view of such teaching, it would have been obvious to incorporate a 10's or better wagering area to Au-Yeung's game. This modification would added another side bet to Au-Yeung's game given the players the perception of having a better opportunity at winning, and thus making Au-Yeung's game more attractive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571)272-4415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Benjamin H. Layno  
Primary Examiner  
Art Unit 3711

bhl